

BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Lowenthal	SB 1247

SUBJECT

Low-Income Housing Credit (LIHC)/Includes Qualified Farmworker Housing Credit (FWHC)/Repeal Farmworker Housing Assistance Program And Specified Credits

SUMMARY

This bill would consolidate the farmworker housing tax credit into the state low-income housing tax credit.

PURPOSE OF BILL

According to the author's office, this bill would streamline the process of allocating the FWHC while increasing the pool of affordable housing investors and the demand for state credits.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2009, and operative for taxable years beginning on or after January 1, 2009.

ANALYSIS

FEDERAL/STATE LAW

Current federal law allows a tax credit for the costs of constructing, rehabilitating, or acquiring low-income housing. The credit amount varies depending on several factors, including when the housing was placed in service and whether it was federally subsidized. The credit is claimed over ten years. The California Tax Credit Allocation Committee (TCAC) has the authority to allocate the federal credit.

Current state law generally conforms to federal law with respect to the LIHC, except that the state low-income housing tax credit LIHC is claimed over four taxable years, is limited to projects located in California, and is allocated in amounts equal to the sum of all the following:

- For taxable years ending 2002 and thereafter, \$70 million increased by the percentage of the Consumer Price Index, for the preceding calendar year,
- The unused housing credit ceiling, if any, for the preceding calendar years, and
- The amount of housing credit ceiling returned in the calendar year.

Current state tax law allows a farmworker housing credit. The credit amount may be up to 50% of the qualified amount of costs paid or incurred for construction or rehabilitation of qualified farmworker housing in California. The housing must satisfy the requirements of the Farmworker Housing Assistance Program for the costs to be eligible for the credit.

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Current state tax law allows a separate credit to commercial lenders equal to 50% of the foregone interest income on loans used to finance eligible expenditures for rehabilitating or constructing qualified farmworker housing. A taxpayer claiming the farmworker housing credit or the credit for foregone interest is required to do the following: (1) obtain certification of the credit allocated from the TCAC, (2) retain a copy of the certification, and (3) provide the certification to the Franchise Tax Board upon request.

The aggregate amount of credits granted for both personal income and corporate taxpayers for building or rehabilitating farmworker housing and for banks and financial corporations for foregone interest on farmworker housing loans may not exceed \$500,000 for any calendar year. This \$500,000 limitation may be increased by an amount equal to any unallocated credits from preceding calendar years.

THIS BILL

This bill would do the following:

- Repeal the farmworker housing assistance program from the Health and Safety Code.
- Add new language to the Health and Safety Code requiring the FWHC to be allocated in the same manner as the state low-income housing tax credit.
- Specify \$500,000 annual cap plus any unallocated credit under prior law is for farmworker housing exclusively;
- Provide that if a disaster occurs, nonfarmworker households can temporarily occupy vacant farmworker units.
- Specify farmworker housing credits that are unallocated or returned could be added to the annual credit allocation cap until exhausted.
- Add a provision that would allow FWHCs to be awarded independently of federal LIHCs.

Additionally, this bill would provide the following definitions:

- “Household” means an immediate family member who resides, or who has made an application to reside together, as defined in the California Code of Regulations,¹ as a single family at a migrant center.
- “Agricultural worker” or “farmworker” has the same meaning as described in the Labor Code,² which means one engaged in agriculture. “Agriculture” is defined by the Labor Code,³ as farming in all its branches.

¹ California Code Regulations Section 7602 Title 25

² Labor Code Section 1140.4

³ Ibid.

- “Farmworker housing” means housing for agricultural workers that are available to, and occupied by, only farmworkers and their households. The Committee may permit an owner to temporarily house nonfarmworkers in vacant units in the event of a disaster or other critical occurrence. However, the emergency shelter shall only be permitted if there are no pending qualified farmworker household applications for residency.

While this bill would repeal the California FWHC, it would add additional credit amounts to the California LIHC that could be allocated to farmworker housing.

This bill would also add double jointing language to incorporate provisions from SB 585 (Lowenthal) that would specify how the LIHC may be allocated to partners and when losses of partners are recognized upon disposition. Also, this bill would clarify that the deferral of abandonment losses do not apply to state low-income housing tax credits set aside for FWHCs unless the FWHC receives a preliminary reservation of federal low-income housing tax credits.

LEGISLATIVE HISTORY

SB 585 (Lowenthal, 2007/08) would specify how the LIHC may be allocated to partners and when losses of partners are recognized upon disposition. Specifically, this bill would allow the state LIHC to be distributed among partners pursuant to a partnership agreement, even if the allocation of that credit did not have substantial economic effect. The bill is currently in the Senate Revenue and Taxation Committee.

SB 713 (Lowenthal, 2007/08) is similar to this bill except it would have allowed the state LIHC to be distributed among partners pursuant to a partnership agreement, even if the allocation of that credit did not have substantial economic effect. This bill also would have consolidated the farmworker housing tax credit program into the state low-income housing tax credit. SB 713 failed to pass out of the Assembly Appropriations Committee.

AB 339 (Aghazarian, 2003/04) would have decreased the period for which the farmworker housing credit is allowable and allow any taxpayer to be eligible for the credit regardless of actual ownership. AB 339 failed to pass out of the Assembly Revenue and Taxation Committee.

AB 1811 (Stats. 2000, Ch. 311) made various changes to the Farmworker Housing Assistance Program.

AB 1903 (Lowenthal, 1999/2000) is similar to this bill except it would have allowed the state LIHC to be distributed among partners pursuant to a partnership agreement, even if the allocation of that credit did not have substantial economic effect. Governor Davis vetoed this bill on September 30, 2000, stating, “I am concerned about the possible abuses that may arise. Specifically, since this bill would allow a credit to be severed from the economic interest each partner has in the profits and losses of the project, it could lead to allocations for tax shelter purposes.”

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York laws do not provide a credit comparable to the credit allowed by this bill. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

This bill would not impact the department's costs

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue impact:

Revenue Impact – SB 1247 as Amended April 22, 2008 Effective for Applications Received On or After January 1, 2009 Assumed Enactment Date After June 30, 2008			
Fiscal Year	2008/09	2009/10	2010/11
Revenue Loss	No impact	No impact	< -\$150,000

Any possible changes in employment, personal income, or gross state product that might result from this bill are not taken into account.

Revenue Discussion

The revenue impact of this bill would depend on whether incorporating the current FWHC program into the LIHC program would result in additional low-income housing that serves farmworkers and their households exclusively. A historical review of the existing FWHC program indicates that less than ten taxpayers claim in aggregate under \$10,000 in credits in any given year. Even if credits awarded annually triple in amount, the revenue impact of this bill would be less than \$150,000 starting in fiscal year 2010/11. This estimate assumes there would be a two-year delay from the time the FWHC credit application is received to final award and use of the credit.

Support/Opposition

According to the most recent policy committee analysis issued by the Assembly Revenue and Taxation Committee, organizations in support and opposition are as follows:

Support: Boston Capital, California Coalition for Rural Housing, California Council for Affordable Housing, Centerline Capital Group, MMA Financial, Monterey County, Paul, Hastings, Janofsky, & Walker, LLP, State Treasurer Bill Lockyer, Western Center on Law and Poverty

Opposition: None

VOTES

Assembly Floor – Ayes: 78, Noes: 0

Senate Floor – Ayes: 32, Noes: 1

Concurrence – Ayes: 38, Noes: 1

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